

July 3, 2019

Scott Chan, Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Re: Proposed Change in Control and Governance of St. Joseph Health System and Adventist Health System/ West

Dear Mr. Chan:

We appreciate this opportunity to comment on the proposed change in control and governance in which Adventist Health System/ West (“Adventist”) and St. Joseph Health System (“St. Joseph”) propose forming a jointly held charitable California limited liability company (ST Network, LLC). Over the past 25 years, our organizations have actively participated in dozens of California health system transactions involving Catholic hospitals, and have significant expertise in the impact of these transactions on access to high-quality reproductive health care services, as well as access to health care for LGBTQ individuals and families, and low-income communities.

We urge the Attorney General, if he approves any change in control and governance of Adventist and St. Joseph, to require as a condition of approval that all nine facilities implicated by this proposal be required to affirm that any non-medical restrictions on practice or care that are currently in place will be eliminated. Further, we urge the Attorney General to require that each system maintain the current level of services provided for 15 years, and to prohibit the imposition of any additional restrictions on medical practice.

Refusals of health care for reasons unrelated to medical standards

We believe all patients should be able to get the health care they need, regardless of where they live. Yet many Californians who rely on religiously-identified hospitals for their health care are routinely turned away and denied much-needed care. Transgender people and people seeking abortion, birth control, or miscarriage care are most frequently refused. Religiously-affiliated hospitals are refusing to provide necessary care to patients in need, even when the person’s life is in danger. People who have been denied care have faced infection and even death.

Per the parties’ papers, Adventist and St. Joseph “health facilities will continue to operate under their own religious mission and values and neither is imposing its ecclesiastical precepts or policies on the other.”¹ Accordingly, St. Joseph facilities will continue to follow the Ethical and Religious Directives for Health Care Services and Adventist will continue to adhere to values of the Seventh-Day Adventist Church. Both of these guiding forces exert restrictions on care that are harmful to patients, and we urge the Attorney General to mitigate their effects to the fullest extent allowed by law. At minimum, the transaction should guarantee that the Adventist hospitals shall not take on the more extensive Catholic hospital restrictions on access to reproductive health care.

¹ SJHS Application for AG Consent, June 3, 2018. Pg. 3.

In addition to our concerns about the restrictions operating within each facility at issue, we are concerned that the affiliation of these two faith-based systems will have the effect of strengthening the market power of health systems that restrict reproductive health care and health care for LGBTQ patients. Aside from sheer number of patients who rely on these institutions for care, mergers of this type increasingly give Catholic and other restrictive religious entities outsize influence and corporate power in the state's health care market. We fear that such affiliations have the potential to subject more California patients to restricted care, as well as increase these systems' political power to normalize and advocate for the legality of such refusals.

St. Joseph restricts reproductive health care and denies care to transgender patients

Per the parties' assertions, St. Joseph health facilities are subject to the Ethical and Religious Directives for Health Care Services (ERDs), and will continue to be so beholden under the proposed affiliation.² The ERDs are a religious document written by the U.S. Conference of Catholic Bishops that forbids reproductive health services, including all birth control methods, sterilization, medically-appropriate miscarriage management, abortion, the least invasive treatments for ectopic pregnancies, and some infertility treatments. The ERDs provide no exceptions for risks to a patient's health or even life.

Every patient who enters a hospital, clinic, doctor's office, or any other medical setting expects that they will receive treatment information and services that meet the standard of care.³ Yet, the restrictions the ERDs place on Catholic hospitals are severe limitations that violate basic evidence-based standards of care – accepted medical practice and as adopted by the major professional medical associations. These restrictions prevent willing providers from providing the standard of care to their patients. Our organizations have provided extensive comments on St. Joseph as a health system and its adherence to the ERDs, and we refer your office to our prior advocacy for broader detail.

We know that specific St. Joseph hospitals at issue in this merger have denied patients gender-affirming care. At St. Joseph Hospital of Eureka, Oliver Knight was prepped and ready for gender-affirming surgery when his doctor informed him he would not be able to perform this common procedure due to the hospital's religious policies. Minutes after, Mr. Knight was asked to leave the hospital. He was devastated. At Santa Rosa Memorial Hospital, a St. Joseph facility, another patient was misgendered and denied gender affirming surgery. She felt humiliated and dehumanized. These two recent examples evince a policy and practice of denying this crucial care to transgender patients.

The Attorney General should secure from St. Joseph a commitment that all LGBTQ patients and their families will be treated with dignity and respect, and that they will all receive the same medical standard of care that any other patient should receive. To ensure that transgender

² SJHS Application for AG Consent, June 3, 2018. Pg. 3.

³ M. Guiahi et al., 90 CONTRACEPTION 429–34 (2014). A sample of reproductive-age women completed an online survey in 2014. The majority expected their gynecologist to provide all family planning services, and they did not anticipate a difference in reproductive health care based on whether the institution was Catholic or secular.

individuals are able to access gender-affirming care, the Attorney General should place conditions on the merger that require St. Joseph to provide gender-affirming care without discrimination at all of its facilities.

Given the location of several of these facilities in a rural California environment where accessing abortion care can already be challenging, particularly for low-income individuals, it is critical that the Attorney General place conditions on this merger that would require St. Joseph facilities to eliminate any non-medical restrictions on practice or care that are currently in place.

Adventist follows restrictive and stigmatizing policies

Per the parties' assertions, Adventist facilities will continue to adhere to the values of the Seventh-day Adventist Church under the proposed affiliation. It is instructive to look at the written policies and statements of the Church. The Seventh-day Adventist Church has adopted policies that oppose abortion (except in very limited circumstances) and other types of basic reproductive health care, discriminate against LGBTQ people and relationships, deny the lived reality of transgender individuals, and oppose access to physician aid-in-dying.

Access to the Full Spectrum of Reproductive Health Care

Official statements of the Seventh-day Adventist Church on reproductive health care include the following:

- “Abortion, the intentional termination of an established pregnancy, is not morally acceptable for purposes of birth control.”⁴
- “The church recognizes as morally acceptable the use of contraceptive measures, including condoms, by married couples who seek to control conception. Condoms in particular may be indicated in some marital circumstances—for example, when one partner has been exposed to or has contracted a sexually transmitted disease, thus putting the spouse at high risk for infection. On the other hand, the premarital or extramarital use of condoms—either in an attempt to lower the risk of unwanted pregnancy or to prevent the transmission of a sexually transmitted disease raises moral concerns.”

The documents submitted by the parties state that the proposed transaction is not expected to impact the provision of reproductive health services at any of the Adventist facilities. They state that the proposed transaction will not effect a change in the scope or type of any reproductive health service currently provided by any hospital or health care facility at issue in this transaction, and states that this section as required by Title 11, Cal. Admin. Code, § 999.5(d)(5)(G) is inapplicable. Considering Adventist's policy positions as outlined above, we remain concerned regardless of this assertion. Of note, Loma Linda University Health, an Adventist health system in California, provides abortions “only in situations in which the fetus

⁴ Statements Guidelines & Other Documents, Seventh-day Adventist, a 2010 Compilation by the Communication Department of the General Conference, June 2010, at 10, <https://www.adventist.org/fileadmin/adventist.org/files/articles/official-statements/Statements-2010-english.pdf>.

has a condition that is incompatible with life, or in a situation when the pregnancy is life-threatening to the mother.”⁵

Given the location of several of these facilities in a rural California environment where accessing abortion care can already be challenging, particularly for low-income individuals, it is critical that the Attorney General place conditions on this merger that would require Adventist facilities to eliminate any non-medical restrictions on practice or care that are currently in place.

Non-Discriminatory LGBTQ Patient Care

Official statements of Seventh-day Adventist on LGBTQ people and relationships include the following:

- “Homosexuality is a manifestation of the disturbance and brokenness in human inclinations and relations caused by the entrance of sin into the world.”⁶
- “Seventh-day Adventists believe that marriage is a lifelong union between a man and a woman in loving companionship and that the Bible makes no accommodation for homosexual activity or lifestyle. The Church does not accept the idea of same-sex marriages nor does it condone homosexual practices or advocacy.”⁷ (internal citations omitted)

Additionally, in the Human Rights Campaign’s most recent Healthcare Equality Index—scoring facilities on “policies and practices dedicated to the equitable treatment and inclusion of LGBTQ patients, visitors and employees”—Adventist Health facilities in California consistently received scores of 60 out of 100—in the lowest 15% of hospitals in California.⁸

The Affiliation Agreement documents are silent as to health care for LGBTQ patients, including gender-affirming or transition-related care for transgender patients. However, given these statements and the absence of concrete protections in the merger documents, we have concerns about how the merger will impact the care received by LGBTQ patients served by Adventist facilities. We want to ensure that this merger does not result in a decline in protections for LGBTQ patients.

The Attorney General should secure from Adventist a commitment that all LGBTQ patients and their families will be treated with dignity and respect, and that they will all receive the same medical standard of care that any other patient should receive.

⁵ Pam Dietrich, Ted Wilson Addresses Abortion Issues During Jamaica Visit – And More News Shorts, SPECTRUM MAG. (Feb. 13, 2019), <https://spectrummagazine.org/news/2019/ted-wilson-addresses-abortion-issues-during-jamaica-visit-and-more-news-shorts>.

⁶ Official Statements, Same Sex Unions (Oct. 17, 2012), <https://www.adventist.org/en/information/official-statements/statements/article/go/-/same-sex-unions/>.

⁷ Statements Guidelines & Other Documents, Seventh-day Adventist, a 2010 Compilation by the Communication Department of the General Conference, June 2010, at 276.

⁸ Healthcare Equality Index 2018: Rising to the New Standard of Promoting Equitable and Inclusive Care for Lesbian, Gay Bisexual, Transgender & Queer Patients and Their Families, HUMAN RIGHTS CAMPAIGN 58-62, https://assets2.hrc.org/files/assets/resources/HEI-2018-FinalReport.pdf?_ga=2.106029194.808232.1555461919-393511024.1555461919

Access to Gender-Affirming Care

Official statements of Seventh-day Adventist Church on transgender people include the following:

- “God created humanity as two persons who are respectively identified as male and female in terms of gender. The Bible inextricably ties gender to biological sex … and does not make a distinction between the two. The Word of God affirms complementarity as well as clear distinctions between male and female in creation.”⁹ (internal citations omitted)
- “According to Scripture, our gender identity, as designed by God, is determined by our biological sex at birth.”¹⁰
- “The fact that some individuals claim a gender identity incompatible with their biological sex reveals a serious dichotomy. This brokenness or distress, whether felt or not, is an expression of the damaging effects of sin on humans and may have a variety of causes.”¹¹
- “[T]he Church strongly cautions transgender people against sex reassignment surgery and against marriage, if they have undergone such a procedure. From the biblical wholistic viewpoint of human nature, a full transition from one gender to another and the attainment of an integrated sexual identity cannot be expected in the case of sex reassignment surgery.”¹²

Many hospitals throughout California have made great strides in improving the quality of health care services for LGBTQ patients and providing access to a greater number of services. This improvement is especially noticeable in the provision of transition-related care, which was confirmed as a covered benefit by the Department of Managed Health Care, Department of Health Care Services, and Department of Insurance in 2013, in accordance with the California Insurance Nondiscrimination Act.¹³

The Adventist statements about transgender people pathologize and deny transgender people’s existence. If the provision of health care is to be guided by such statements, it casts serious doubt on an institution’s ability to treat a transgender patient without bias and as a whole, integrated person. To ensure that transgender individuals are able to access gender-affirming care, the Attorney General should place conditions on the merger that require Adventist to provide gender-affirming care without discrimination at all of its facilities.

Access to the Full Spectrum of End-of-Life Options

Official statements of Seventh-day Adventist Church on *physician-aid-in-dying* include the following:

- “While Christian love may lead to the withholding or withdrawing of medical interventions that only increase suffering or prolong dying, Seventh-day Adventists do not practice ‘mercy killing’ or assist in suicide. They are opposed to active euthanasia,

⁹ *Supra*, note 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 10 CCR § 2561.2.

the intentional taking of the life of a suffering or dying person.” (internal citations omitted)

- “Christian compassion calls for the alleviation of suffering. In caring for the dying, it is a Christian responsibility to relieve pain and suffering, to the fullest extent possible, not to include active euthanasia. When it is clear that medical intervention will not cure a patient, the primary goal of care should shift to relief from suffering.” (internal citations omitted)

In California, the End of Life Option Act enables adults diagnosed with terminal diseases to request aid-in-dying medications from a physician.¹⁴ Patient-directed end-of-life care and expanded choice for the terminally ill are important to protect patient dignity and to ensure no one dies in pain and no one dies alone. Given the official statements above, the Attorney General should place conditions on the merger requiring Adventist to provide the full scope of end-of-life care options available under the law or, at minimum, complete information about such options and referrals to organizations that can facilitate patients’ access to desired options

Impact of new restrictions in updated Ethical and Religious Directives for Catholic Health Care Services

In June of last year, the U.S. Conference of Catholic Bishops approved a new edition of the ERDs. This new edition broadened restrictions around “collaboration,” which includes mergers like the one at issue as well as any business dealings between Catholic and non-Catholic entities (or any entities not governed by the ERDs). One addition to this section provides that any mergers, including the one at issue here, must be operated “in full accord with the moral teaching of the Catholic Church,” including specific religious restrictions.

It is unclear from the merger application how St. Joseph and Adventist may interpret these revisions, and in turn what impact this update could have on protections promised by the two entities on any conditions put in place by the Attorney General to protect access to services. We remind the Attorney General that the ERDs document is non-medical, and that it is not legally binding. However, based on St. Joseph Health System’s historical adherence to this document, we urge particular caution. We urge the Attorney General to demand additional information from the merging parties as to the impact that the broadened restrictions on collaboration in the updated version of the ERDs may have on any promises to maintain access to care provided in the merger agreement. We also urge the Attorney General to secure assurances from the merging parties as to their willingness and ability to adhere to any conditions imposed by the Attorney General. If necessary, the Attorney General should secure additional legally binding and enforceable commitments from the parties with respect to any conditions that your office may impose.

Recommendations:

Given these guiding documents, we have serious concerns about both St. Joseph and Adventist as systems, and about their affiliation. We urge Attorney General Becerra to ensure that if he approves any change in control and governance of St. Joseph and Adventist, that approval is

¹⁴ Cal. Health & Safety Code § 443 et seq.

accompanied by robust and enforceable conditions that protect the community interests. In particular, we urge conditions that ensure community members can access the health care services they need, including reproductive health services, respectful health services for LGBTQ patients, and services for low-income and underserved communities.

We ask the Attorney General to set conditions that are the most protective possible of patients, as follow:

- Require that reproductive health services are maintained at least at their current levels based on a 5-year lookback for a minimum of fifteen years post-merger in each of the nine facilities at issue. In the event that the full spectrum of reproductive health services are at all restricted under the status quo, it is critical to require facilities to eliminate any non-medical restrictions on practice or care that are currently in place.
- Secure from both St. Joseph and Adventist a commitment that all LGBTQ patients will be treated with dignity and respect, and that they will allow providers to deliver the standard of care—gender-affirming and otherwise—to transgender, non-binary, and gender non-conforming patients. Include a provision noting that gender dysphoria is a serious medical condition that may require medical interventions, and for that reason the merging entities are prohibited from preventing provision of such care.
- Require the availability of the full spectrum of end-of-life care options or, at minimum, accurate information and referrals to providers of such options, and maintain such care for a minimum of fifteen years post-merger.
- Demand additional information in writing and made publicly available from St. Joseph and Adventist as to the impact that the broadened restrictions on collaboration in the updated version of the ERDs may have on any protections for access to care provided in the merger agreement. If necessary, the Attorney General should secure additional legally binding and enforceable commitments both parties with respect to any conditions that your office may impose.
- Require specific reporting on maintenance of reproductive health services, essential health services, community benefits, charity care, and Medi-Cal and Medicare contracts, at a minimum of every three years post-merger.

Thank you for considering these comments. If you have questions or need further information, please contact Ruth Dawson at rdawson@aclusocal.org or 213-977-5258.

Sincerely,

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Susan Berke Fogel
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